

XO Communications, Inc.



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JSA

December 3, 2002

Ms. Magalie Roman Salas
Secretary, Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Ex Parte Presentation

RE: WC Docket 02-306, Application by SBC Pacific for Authorization to Provide In-Region, InterLATA Services in California

Dear Ms. Salas:

Pursuant to the requirements of Sections 1.1200 et seq. of the Commission's rules, you are hereby notified on behalf of XO Communications, Inc and XO California, Inc. that yesterday we provided the attached document to Monica Desai, Legal Advisor to Commissioner Kevin Martin.

The document is a copy of a California Public Utilities Commission order released June 12, 2002 accepting the nomination of DS3 loops for examination. Please do not hesitate to contact me should you have any questions regarding this filing.

Sincerely,

A handwritten signature in cursive script that reads "Cathleen Massey". The signature is written in black ink and is positioned above the printed name and title.

Cathleen Massey
Vice President, External Affairs

Enc.

cc: Monica Desai

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-024
(Filed February 21, 2001)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Loops in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-035
(Filed February 28, 2001)

Application of The Telephone Connection Local Services, LLC (U 5522 C) for the Commission to Reexamine the Recurring Costs and Prices of the DS-3 Entrance Facility Without Equipment in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-031
(Filed February 28, 2002)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Interoffice Transmission Facilities and Signaling Networks and Call-Related Databases in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-032
(Filed February 28, 2002)

Application of Pacific Bell Telephone Company (U 1001 C) for the Commission to Reexamine the Costs and Prices of the Expanded Interconnection Service Cross-Connect Network Element in the Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-034
(Filed February 28, 2002)

Application of XO California, Inc. (U 5553 C) for the Commission to Reexamine the Recurring Costs of DS1 and DS3 Unbundled Network Element Loops in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-03-002
(Filed March 1, 2002)

**SCOPING MEMO FOR CONSOLIDATED 2001/2002
UNBUNDLED NETWORK ELEMENT (UNE) REEXAMINATION FOR
PACIFIC BELL TELEPHONE COMPANY**

I. Summary

This ruling consolidates the above-captioned applications and sets the scope and schedule for the consolidated cases.¹ Specifically, this ruling determines that the Commission will proceed with Application (A.) 02-03-002 to reexamine the DS-3 Loop and A.02-02-031 to reexamine the DS-3 Entrance Facility Without Equipment. In addition, the Commission will review the costs of Dedicated Transport and SS7 Links as nominated in A.02-02-032, but we decline to review the other Transport and Signaling UNEs nominated in that application. DS-3 Loops, the DS-3 entrance facility without equipment,

¹ The consolidated applications are A.01-02-024/ A.01-02-035 (jointly referred to as the "2001 UNE Reexamination") and A.02-02-031/ A.02-02-032/ A.02-02-034/ A.02-03-002 (jointly referred to as the "2002 UNE Reexamination").

Dedicated Transport and SS7 links are the only UNEs that will be examined from those nominated in applications filed in 2002. The scope of the consolidated 2001/2002 UNE Reexamination is revised to include these additional UNEs and a schedule is set requiring Pacific, and any other party that chooses, to file cost studies by September 20, 2002 for DS-3 Loops, the DS-3 entrance facility without equipment, Dedicated Transport and SS7 links, along with cost studies for unbundled loops and switching in the final phase of the 2001 UNE Reexamination. The assigned ALJ will draft an order dismissing A.02-02-034 and the portions of A.02-02-032 that we decline to address at this time.

II. Background

In Decision (D.) 99-11-050 in Rulemaking (R.) 93-04-003/Investigation (I.) 93-04-002, the Open Access and Network Architecture Development (OANAD) proceeding, the Commission invited carriers with interconnection agreements with Pacific to annually nominate UNEs for consideration by the Commission in a proceeding to review the costs of up to two UNEs. The Commission set a threshold in the decision requiring that a particular UNE must have experienced a cost change (up or down) of at least 20% to be eligible for nomination. The decision required that a party nominating a UNE for review must include a summary of evidence demonstrating a cost change of at least 20% from the costs approved in D.98-02-106.

In February 2001, the Commission received nominations for several UNEs from which two were selected for reexamination in 2001, namely unbundled loops and unbundled switching. In a June 2001 ruling and scoping memo, the Assigned Commissioner and ALJ determined that unbundled loops and unbundled switching would be reviewed in the 2001 UNE Reexamination. In September 2001, the Assigned ALJ and Assigned Commissioner suspended the schedule for the 2001 UNE Reexamination to consider a motion for interim UNE

rates for basic 2-wire loops and unbundled switching filed by AT&T Communications of California and WorldCom Inc. (hereinafter "Joint Applicants"). On May 16, 2002, the Commission issued D.02-05-042 granting the Joint Applicants' motion for interim relief, in part, and adopting interim discounts to unbundled loop and switching rates for Pacific Bell Telephone Company (Pacific).

In late February and early March 2002, the Commission received four applications nominating specific UNEs for the 2002 UNE Reexamination proceeding. Specifically, the nominations received are as follows:

- A.02-02-031, filed by The Telephone Connection Local Services, LLC (Telephone Connection), requesting reexamination of the DS-3 entrance facility without equipment.
- A.02-02-032, filed by AT&T Communications of California, Inc. and WorldCom, Inc. (collectively "Joint Applicants"), requesting reexamination of Interoffice Transmission Facilities ("transport") and Signaling Networks and Call-Related Databases ("signaling").
- A.02-02-034, filed by Pacific Bell Telephone Company (Pacific), requesting reexamination of the Expanded Interconnection Service Cross-Connect (EISCC).
- A.02-03-002, filed by XO California, Inc. (XO), requesting reexamination of DS-1 and DS-3 loops.²

Pacific, The Utility Reform Network (TURN), Joint Applicants, and XO filed comments on these nominations, and Pacific filed reply comments.

A prehearing conference (PHC) was held on June 3, 2002, to discuss

² The ALJ clarified in her 5/21/02 ruling in this docket that DS-1 loops are already included in the final phase of the 2001 UNE Reexamination, so we will limit our discussion of XO's nomination to the DS-3 loop.

consolidation of the 2001 and 2002 UNE Reexaminations and other scoping matters for the two cases.

III. Consolidation of 2001 and 2002 UNE Reexaminations

In a May 21, 2002 ruling, the assigned ALJ asked parties whether the Commission should consolidate the applications pertaining to the 2002 UNE Reexamination with the final phase of the 2001 UNE Reexamination. Joint Applicants, TURN and ORA supported consolidation of the cases. Pacific and XO did not oppose consolidation, but cautioned that it opposed any result that would delay the determination of final loop and switching costs.

We have no reason to believe that consolidation will delay the final phase of the 2001 Reexamination of loops and switching. At the same time, consolidation of 2002 nominations with the ongoing 2001 UNE review will expedite a result in the 2002 UNE Reexamination. Without consolidation, the 2002 case would most likely not be handled until after completion of the 2001 UNE Reexamination. In PHC statements and again at the PHC, the parties have assured us that they can perform cost studies of loops and switching, and any other UNEs accepted from the list of 2002 nominations, within the same time frame. Therefore, we will consolidate the 2001 UNE Reexamination with the 2002 UNE Reexamination.

IV. 2002 Nominations

A. DS-3 Loops

In A.02-03-002, XO requests reexamination of DS-3 loops. XO contends the DS-3 loop is vital to the ability of CLCs to compete against Pacific for midsize and large business customers in California, and it presents a comparison of DS-3 loop prices in the 13 states in which Pacific's parent company, SBC Communications, Inc. (SBC) operates. This comparison shows that Pacific's DS-3 UNE Loop prices

are higher than the DS-3 loop price in every other SBC state.³ XO further notes that the Commission did not review or set DS-3 loop prices in the OANAD proceeding and Pacific has never demonstrated that its current DS-3 loop prices are cost-based or TELRIC compliant. XO points to statements by Pacific that DS-3 loop facilities are not point-to-point but instead a ring configuration and therefore do not have geographic cost sensitivities. In XO's view, these statements by Pacific support XO's claim that DS-3 rates in California should not remain higher than DS-3 rates in other SBC states. Finally, XO argues that correct pricing of DS-3 loops is vital to competition in California because there is frequently no substitute for Pacific's "last mile" facilities to customer premises and proper TELRIC pricing for the DS-3 loop is critical to ensuring that all competitors have an opportunity to compete.

Pacific states in response that rate comparisons with other states do not show what it costs Pacific to provide a DS-3 loop or whether these costs have changed. Joint Applicants point out that parties have previously requested review of DS-3 loops and these requests were denied in a July 11, 2001 ruling in the 2001 UNE Reexamination. Nevertheless, Joint Applicants express support for reconsideration of this ruling and a review of the DS-3 loop, as long as it is reviewed in addition to Transport and Signaling UNEs nominated by Joint Applicants.

We are persuaded to include an examination of the cost of DS-3 loops in the 2001/2002 UNE Reexamination primarily because the costs of this UNE were never examined in the prior OANAD proceeding using a forward-looking,

³ Exhibit A of A.02-02-003 indicates DS-3 Loop prices in California are 56% to 240% higher than prices in other SBC states.

TELRIC analysis. XO has made a compelling argument that the DS-3 loop is vital to competition because there is frequently no other means for a competitor to gain access to a customer's premises to provide high bandwidth services except through the use of a DS-3 loop. No party disputed this claim. In addition, XO suggests through its rate comparison with other SBC states that there would be value in conducting a forward-looking review of DS-3 loop costs for Pacific. Pacific's own statements that the DS-3 loop is not subject to geographic variation lend support to XO's argument that California DS-3 loop prices may be exorbitant. (See PHC Transcript, 6/3/02, at 253) While a comparison of DS-3 loop prices in California and other SBC states does not prove that California DS-3 loop costs have declined, we find it troubling that California prices appear out of line with other states, particularly given Pacific's statements that there is little geographic sensitivity in the cost of providing a DS-3 loop.

Therefore, we will reverse our statements in a prior ruling in this proceeding that we would not expand the scope of the case to include UNEs that were not considered in earlier cost studies. We find that given the competitive importance of the DS-3 loop and the fact that a cost-based rate for this UNE has never been set, now is the appropriate time to examine DS-3 loop costs. The parties also assure us that review of the DS-3 loop can be accomplished within the same time frame for our final review of loops and switching. Therefore, enlarging the scope to include the DS-3 loop will not unduly lengthen this case.

B. DS-3 Entrance Facility Without Equipment

In A.02-02-031, Telephone Connection requests review of the DS-3 entrance facility without equipment.⁴ According to Telephone Connection, this UNE can

⁴ Telephone Connection states that this UNE is essentially the same as a DS-3 loop, but

Footnote continued on next page

be reviewed along with a review of DS-3 loops, with little or no additional effort. Telephone Connection contends that the actual costs of the DS-3 entrance facility without equipment are more than 20% below the cost upon which the Commission based its pricing for this UNE in D.99-11-050, and that the pricing of this UNE is a critical factor in allowing smaller CLCs to successfully compete in the local market.

Telephone Connection claims that the price for this UNE was never set properly in prior Commission orders because Pacific neglected to submit costs for this UNE in its 1997 TELRIC cost study. To price this UNE, the Commission had to back out costs of equipment from the TELRIC for a DS-3 entrance facility with equipment, even though the Commission had already determined that the costs shown in the study for the DS-3 entrance facility with equipment were “excessive.” (See D.99-11-050, *mimeo*, at 105.) Telephone Connection compares DS-3 loop prices in California and Texas, noting that DS-3 loops in California are priced between 176% and 90% above Texas urban and rural DS-3 loops respectively. Telephone Connection also notes Pacific’s assertions that DS-3 facilities are not subject to geographic cost sensitivities. Based on this rationale, Telephone Connection states that the current price of the DS-3 entrance facility without equipment greatly exceeds its cost and should be reviewed.

Pacific expressed no opinion on whether this UNE should be reviewed although it did note that comparisons to other states do not indicate whether Pacific’s costs have changed.

We will accept this UNE for review because we have agreed to review the forward looking cost of DS-3 loops, and it makes sense to review the cost of the

without multiplexing/de-multiplexing equipment.

DS-3 entrance facility without equipment in conjunction with a review of DS-3 loops. The Commission noted in D.99-11-050 that the underlying costs used to set a price for this UNE were not reliable. Further, the parties agree that if we are already looking at DS-3 loops, there is little additional work to review this UNE. (See PHC Transcript. at 217.) Since we have already decided to review the DS-3 loop, it is appropriate to review the DS-3 entrance facility without equipment at the same time.

C. Transport, Signaling, and Shared and Common Costs

In A.02-02-032, Joint Applicants request review of unbundled Interoffice Transmission Facilities (transport) and Signaling Networks and Call-Related Databases (signaling) because they contend it is virtually certain that the costs of both transport and signaling have decreased by 20% or more from those adopted in the prior OANAD. To support this claim, Joint Applicants state that Pacific's transport and signaling prices rely significantly on Pacific's cost studies for loops and switching because a majority of the costs for shared transport were taken from Pacific's end-office and tandem switching cost studies. Joint Applicants also contend that many of the same factors that convinced the Commission to review loop and switching costs in the 2001 Reexamination apply to transport and signaling as well. For example, Joint Applicants contend that transport and signaling costs have declined due to economies of scale and density that have lowered unit investments and unit expenses, decreases in key components such as Synchronous Optical Network (SONET) electronic equipment, and other technological changes. Joint Applicants maintain that transport and signaling should be reviewed together because they share the same fiber cables, support structure, and electronics systems at the end-office and because the Commission adopted the same UNE prices for dedicated transport and SS7 signaling links in D.99-11-050.

Joint Applicants also resurrect their request from the 2001 UNE Reexamination that the Commission reconsider the shared and common cost mark-up of 19% adopted in D.99-11-050. In their PHC statement, Joint Applicants essentially expand their nominations of transport and signaling to now request that Commission convert the 2002 UNE Reexamination into a general reexamination of all of Pacific's UNEs and the 19% shared and common cost mark-up.

TURN/ORR support the nomination of transport and signaling because all types of customers would benefit from reexamination of these UNEs. TURN/ORR also support review of the 19% mark-up, noting that California has one of the highest shared and common cost mark-ups in the country.

Pacific opposes review of transport and signaling for several reasons, including the argument that the nomination actually involves nine UNEs rather than two. Pacific also contends that several aspects of signaling are not UNEs, that costs for several of these elements were not examined in the original OANAD cost studies, and that Joint Applicants have not provided sufficient cost support for their contention that volume growth and increased scale economies have driven costs down.

We have serious concerns that expanding the proceeding to include transport and signaling might delay a decision on final prices for loops and switching. While there may be some commonality between review of loops and switching and review of transport and signaling, such as sharing of certain facilities and electronics, we are concerned that any gains from these commonalities will be more than outweighed by the time taken to resolve disputes over modeling, engineering, and myriad technical assumptions involving transport and signaling. Several parties have asked that we not consolidate the 2001 and 2002 UNE Reexaminations if delay were to result. To

enlarge the scope of the original 2001 UNE Reexamination as Joint Applicants now request would certainly risk such a delay. We are concerned that any synergy between a study of loops and switching and a study of transport and signaling is exaggerated and is likely to be more than offset by disputes over network engineering and electronics. We therefore decline to review Transport and Signaling as nominated by Joint Applicants. For the same reasons, we decline Joint Applicants' invitation to review all the UNEs priced in D.99-11-050. Because we are concerned that adding transport and signaling might delay the conclusion of the 2001 UNE Reexamination, we will not entertain reviewing all of Pacific's UNEs at this time, particularly when we have yet to resolve which cost model will be used for the reexamination of loops and switching alone.

We are willing, however, to consider a more limited approach to the Joint Applicants' nomination. At the June 3, 2002 PHC, Pacific itself noted that there is some overlap between costs for DS-1 and DS-3 loops and Dedicated Transport. (PHC Transcript, 6/3/02, p. 215-216.) Given that we have already decided to review DS-1 and DS-3 loops in the 2001/2002 UNE Reexamination, we should take advantage of this generally acknowledged overlap and review the costs of Dedicated Transport at the same time that we review DS-1 and DS-3 loops. All parties admit that there are some synergies in review of these costs, and we do not believe this will cause undue delay. We also note that the Commission applied Dedicated Transport prices to SS7 Links in D.99-11-050. (D.99-11-050, mimeo at 107 and footnote 95.) If new prices are adopted for Dedicated Transport in this proceeding, we should uphold the determinations made in D.99-11-050 and apply any new prices for Dedicated Transport to SS7 Links here as well, unless parties can justify a reason for not doing so. Therefore, we will revise the scope of this case to include a review of costs and prices for Dedicated Transport (voice grade, DS-1 and DS-3) and SS7 Links (voice grade and DS-1).

With regard to the nomination of the 19% mark-up, we have twice ruled that this proceeding will not include a review of shared and common costs. Joint Applicants have presented no new arguments as to why we should ignore Ordering Paragraph 12 of D.99-11-050 that specifically prohibited review of shared and common costs in the limited UNE Reexamination proceeding. We note that a petition to modify this language in D.99-11-050 is pending before the Commission. If the Commission should decide to modify its prior limitation on review of shared and common costs, we can revise the scope of this proceeding accordingly.

D. EISCC

Pacific nominated the EISCC for review in A.02-02-034 based on its claims that the cost of providing the EISCC has increased by more than 20% over prior cost studies. The EISCC is the connection between Pacific's network and a CLC's collocation arrangement within a Pacific central office building. In a declaration attached to the motion, Pacific's witness Mr. Pearsons explains that the cost of the EISCC is heavily dependent upon utilization level or "fill factor." Mr. Pearsons states that recent data indicate that this utilization level was greatly overstated in the prior cost study, and therefore, a cost re-examination is justified.

Joint Applicants oppose the nomination of the EISCC, stating that it is not an unbundled network element but merely an interconnection facility that should be reconsidered in the collocation phase of the Commission's OANAD proceeding. Further, they argue that review of transport and signaling will have a greater impact on competition and that if prices for transport and signaling are properly set at cost based levels, utilization levels for the EISCC will likely rise to the levels modeled previously. Joint Applicants also argue that EISCC costs should be based on forward looking, long-run utilization levels rather than

current data on utilization. XO opposes review of the EISCC for the same reasons.

We will deny Pacific's request to review the EISCC. We will not address Joint Applicants' assertions that the EISCC is not a UNE or that it should be reviewed in the collocation proceeding because we are not persuaded to review the cost of the EISCC. Pacific's justification for review of the EISCC is based solely on utilization levels, and we are unwilling to review it on this basis alone, particularly at a time when utilization may be depressed due to the need to revise other UNE costs. We agree that forward looking, long-run utilization should be employed to determine the cost of the EISCC and current utilization levels are not compelling evidence alone that forward-looking usage levels have changed. When we denied review of the EISCC a year ago, we stated that changes to loop and switching UNE costs could self-correct the low utilization levels found by Pacific. (*See* 6/14/01 Ruling, p. 22.) Interim prices for loops and switching have only recently gone into effect so it would be premature to assume current utilization is an accurate predictor of forward looking utilization levels. Therefore, we decline to review the EISCC at this time.

V. Scope of Consolidated 2001 and 2002 UNE Cost Reexamination

The scope for the 2001 UNE Reexamination was originally set forth in the initial scoping memo on July 14, 2001. Given today's consolidation of the 2001 Reexamination with the 2002 Reexamination, the scope of the consolidated case involves the items set forth on page 23 of the June 14, 2001 ruling and scoping memo as well as the following additional issue pertaining to the accepted nominations for the 2002 UNE Reexamination:

What is the best current estimate of the forward-looking economic cost of DS-3 loops, the DS-3 entrance facility without equipment,

Dedicated Transport, and SS7 Links, and what prices, or rates, should be set for these elements?

In addition, we will now address several other matters that impact the scope of the proceeding.

A. Changes to Key Inputs and Assumptions

Pacific requests that in order to keep this 2001/2002 UNE Reexamination limited in scope, certain inputs and assumptions from prior OANAD cost models and studies should not be considered in this phase. Specifically, Pacific asks that the Commission specify that cost filings in the UNE reexamination should not modify depreciation rates, utilization ("fill") factors, cost of money, and the copper-fiber cross-over point from levels adopted in prior OANAD decisions. Pacific contends that allowing parties to revisit these issues will expand the scope of this proceeding beyond the Commission's original intent. In the alternative, Pacific suggests that if these values are open to review, it will submit what it believes are correct values for these various inputs and assumptions.

In response, Joint Applicants state that due to changes in demand and technology, it would not be forward looking to freeze fill factors and the copper-fiber cross-over. Indeed, Joint Applicants point out that Pacific itself has indicated these factors may be wrong. According to Joint Applicants, it would be unwise for the Commission to freeze inputs that the parties both agree are wrong. The Department of Defense/Federal Executive Agencies (DOD/FEA)⁵ also contend that if parties are not allowed to adjust these four inputs in their cost filings, the Commission will not truly be examining the current forward-looking

⁵ DOD/FEA intervened in the 2001 UNE Reexamination, filed initial testimony, and appeared at the June 3, 2002 PHC.

costs of Pacific's UNEs. TURN, ORA, and XO echoed these same arguments.

We will allow parties to submit cost filings that modify the four inputs and assumptions noted by Pacific, namely depreciation, cost of money, fill factor and the copper-fiber cross-over point. While we agree with Pacific that these values were complex and hard fought in prior OANAD proceedings, we also agree that it might be arbitrary to hold these particular inputs at prior levels while considering changes to other inputs, including placement of remote terminals. We find it makes sense to reconsider the cost of money given the time that has elapsed since we adopted a level in D.96-08-021,⁶ and we are willing to consider changes to depreciation lives, fill factors, and the copper-fiber cross-over point if a party can show a significant event in the industry or technology that justifies a change.

Our default presumption will be that these four items should remain at the levels adopted in our prior orders. A party suggesting a change will have the burden of proving why a change should be made. Any party presenting a cost filing should present it in such a way that these four items can easily be modified to the currently adopted levels.

B. Cost Model Criteria

In our July 11, 2001 ruling in the 2001 Reexamination, we required that Pacific's cost models and cost studies must allow parties to 1) reasonably understand how costs are derived; 2) generally replicate Pacific's calculations; and 3) propose changes in inputs and assumptions in order to modify the costs produced. The Commission applied these criteria in D.02-05-042 when

⁶ See D.96-08-021, Conclusion of Law 18.

evaluating Pacific's initial cost filing and the Joint Applicants' cost filing accompanying their motion for interim relief.

TURN/ORA ask for expansion of the second criterion to require replication of calculations contained in any cost filings, not just replication of Pacific's filings. Because we have expanded the scope of this case to allow the introduction of competing cost models, it makes sense to expand the application of the second criterion in this way and we note this below.

Joint Applicants suggest additional criteria regarding the availability of all underlying data and the capability to examine and modify critical assumptions and engineering principles in cost models and studies. We think these are generally reasonable requirements for any cost filings and will include them in our criteria with a few minor edits.

In summary, we shall modify the criteria we set forth in our July 11, 2001 ruling to now state that any cost models or cost studies filed in this proceeding must allow parties to:

- 1) Reasonably understand how costs are derived by:
 - a. Providing access to all interested parties of the model and all underlying data, formulae, computations, software, engineering assumptions, and outputs; and
 - b. Allowing interested parties to examine and modify the critical assumptions and engineering principles.
- 2) Generally replicate the cost model or cost study calculations; and
- 3) Propose changes in inputs and assumptions in order to modify the costs produced.

C. Deaveraging Requirements

Joint Applicants request that we require cost filings to deaverage UNEs "in a manner that is consistent with any update of the Commission's calculation of universal service support funding via the CHCF-B." (Joint Applicants' PHC

Statement, 5/29/02, p. 8-9.) It appears that Joint Applicants seek deaveraging of costs at the census block group level as opposed to the wire center level that was used to develop the three geographic deaveraging zones adopted in D.02-02-047.

We will not request or require deaveraging to the census block group in this proceeding because we do not believe this is the proper forum for addressing consistency between the geographic deaveraging methodology and universal service funding. Further, we believe this requirement would broaden and unduly delay this proceeding. Therefore, we will only require that cost filings are structured to allow deaveraging of unbundled loops to the wire center level, with the goal of adopting deaveraged loop rates for a limited number of geographic zones. In D.02-02-047, the Commission approved a settlement adopting three geographic zones for unbundled loop UNE rates. Parties may suggest a deviation from these three zones if they believe they can justify a different number of zones, but our default position will be to deaverage the same unbundled loops into the same three zones adopted in D.02-02-047, unless parties can justify changes to this approach.

D. ISDN/xDSL Capable Loops

At the June 3, 2002 PHC, counsel for Covad Communications Company inquired about the status of review of ISDN/xDSL capable loops. To address any confusion on whether the 2001 UNE reexamination includes ISDN/xDSL capable loops, we direct parties to Section VI of our ruling of September 28, 2001 where we stated that Pacific was not required to file additional cost studies for ISDN/xDSL loops, but any changes made to voice grade UNE loops in the 2001 UNE Reexamination proceeding would be applied in setting the price of ISDN/xDSL capable loops.

VI. Schedule

We shall establish the following schedule, subject to change by further ruling of the ALJ:

| | |
|--------------------|---|
| September 20, 2002 | Filing of cost studies/models, explained and supported through Opening Comments, witness declarations, workpapers, supporting materials, and electronic versions of cost models. |
| October 2-3, 2002 | Technical Workshop on cost studies/models |
| November 4-5, 2002 | Technical Workshop on cost studies/models |
| November 20, 2002 | Reply Comments on cost studies/models |
| December 20, 2002 | Rebuttal Comments on cost studies/models |
| January 10, 2003 | Deadline for motions requesting hearings. Any motions must justify the need for an evidentiary hearing by identifying the material disputed factual issues on which hearing should be held. In addition, any motion should identify the general nature of the evidence the party proposes to introduce at the requested hearing. Any right a party may otherwise have to an evidentiary hearing for the presentation of facts will be waived if the party does not follow the above procedure for a timely request. |
| January 24, 2003 | Ruling on need for hearings and submission of case (if request for hearings not granted). |
| April 24, 2003 | Proposed Decision Issued (if hearings not required). |

If Hearings Required:

| | |
|----------------------|---------------------------------|
| February 10-14, 2003 | Evidentiary Hearings |
| March 14, 2003 | Concurrent opening briefs |
| April 11, 2003 | Reply briefs and case submitted |
| July 11, 2003 | Proposed Decision issued |

VII. Discovery

Pacific requests an order limiting discovery while parties are focused on preparing their cost filings. We will not adopt a formal limitation on discovery at this time, because after discussion with the parties at the PHC, we have been assured they will use their best judgment to voluntarily limit discovery to issues needed to develop their cost filings, and because there may be some requests not related to the preparation of cost filings that may not be that onerous for Pacific. We strongly encourage parties to attempt to limit discovery to information needed for cost model development, but this does not mean that Pacific does not have to comply with other reasonable requests. If Pacific believes that requests are not reasonable given its attempts to complete its cost filing by the dates in this ruling, it may request the assigned ALJ to handle any resulting discovery disputes on a case-by-case basis.

We remind parties of the discovery response schedule that we set forth at a prehearing conference on July 9, 2001. At that PHC, ALJ Duda established a one-week deadline for a responding party to indicate to a party seeking discovery whether it would have objections to a given discovery request and whether it would provide responsive data. ALJ Duda set a two-week deadline for actually providing responsive data, but noted that individual cases may vary. (PHC Transcript, 7/9/01, at 57-58). We expect parties to give their best efforts to live within these deadlines before bringing discovery motions to the ALJ.

VIII. Service List

We have incorporated new appearances for the 2002 UNE Reexamination into the existing service list for the 2001 UNE Reexamination. The resulting consolidated service list is attached to this ruling as Appendix A. The service list is also available on the Commission's web page at www.cpuc.ca.gov.

IX. Categorization and Ex Parte Communications

In Resolution ALJ 176-3083, the Commission preliminarily determined that the four applications in the 2002 UNE Reexamination should be categorized as ratesetting and that hearings are not necessary. This ruling confirms this categorization but leaves open the question of whether hearings are required. Given that these consolidated applications are ratesetting and that there has been no final determination that hearings are not necessary as described in Rule 6.6, the 2002 UNE Reexamination is subject to Article 2.5 of the Commission's rules, as are the two applications from the 2001 UNE Reexamination. This means that ex parte communications are subject to the requirements for "all party" or equal time meetings, as set forth in Rules 7(c) and 7.1.

X. Principal Hearing Officer

Pursuant to Pub. Util. Code § 1701.3, ALJ Duda is designated as the principal hearing officer for the 2002 UNE Reexamination.

IT IS RULED that:

1. We shall consolidate Applications (A.) 02-02-031, A.02-02-032, A.02-02-034, and A.02-03-002 (the 2002 UNE Reexamination) with A.01-02-024 and A.01-02-035 (the 2001 UNE Reexamination).

2. The 2001/2002 UNE Reexamination will review the costs of the DS-3 loop, the DS-3 entrance facility without equipment, Dedicated Transport, and SS7 Links, in addition to unbundled loops and switching.

3. The scope and schedule for the consolidated 2001 and 2002 UNE Reexamination is set forth in Sections V and VI of this ruling.

4. The criteria for cost filings in this proceeding are set forth in Section V.B of this ruling.

5. The service list for the consolidated 2001 and 2002 UNE Reexamination is set forth in Appendix A of this ruling.

6. This ruling confirms that the category for the 2002 UNE Reexamination is ratesetting.

7. The ex parte rules set forth in Rules 7(c) and 7.1 of the Commission's Rules of Practice and Procedure apply to the consolidated 2001 and 2002 UNE Reexamination because there has not been a final determination whether hearings are necessary.

8. Administrative Law Judge (ALJ) Duda is the designated principal hearing officer for the consolidated 2001 and 2002 UNE Reexamination.

9. The ALJ will draft an order dismissing A.02-02-034 and the portions of A.02-02-032 that we decline to address at this time.

Dated June 12, 2002, at San Francisco, California.

/s/ CARL WOOD

Carl Wood
Assigned Commissioner

/s/ DOROTHY J. DUDA

Dorothy J. Duda
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo For Consolidated 2001/2002 Unbundled Network Element (UNE) Reexamination For Pacific Bell Telephone Company on all parties of record in this proceeding or their attorneys of record.

Dated June 12, 2002, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

Appendix A

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(END OF APPENDIX A)